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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 RICKY SATTERWHITE, ) CASE NO. C07-2071-RSM  
09 Plaintiff, )  
10 v. ) REPORT AND RECOMMENDATION  
11 KING COUNTY REGIONAL )  
12 JUSTICE CENTER, et al., )  
13 Defendants. )

14 Plaintiff presents to this Court for filing a proposed civil rights complaint under 42 U.S.C.  
15 § 1983. (Dkt. 1.) He names King County Regional Justice Center and Correctional Officers Brey  
16 and Spivey as defendants. Plaintiff alleges his due process rights were violated when he was  
17 deprived of ten days of earned good-time credits following the alleged discovery of cocaine in his  
18 cell. He seeks the reversion of his good-time credits, a written reprimand in the personnel files of  
19 Brey and Spivey, emotional distress damages, and legal costs and fees. Plaintiff also presented an  
20 application to proceed *in forma pauperis* (IFP). (Dkts. 1 & 4.) However, as discussed below,  
21 the Court recommends that plaintiff's application to proceed IFP be denied and this action  
22 dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) based upon plaintiff's failure

01 to adequately allege a cause of action under § 1983.

02       When a prisoner challenges the fact or duration of his confinement, his sole federal remedy  
03 is a writ of habeas corpus, to which the exhaustion requirement applies. *Preiser v. Rodriguez*, 411  
04 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990). Further, a civil  
05 rights complaint under § 1983 cannot proceed when “a judgment in favor of the plaintiff would  
06 necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be  
07 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been  
08 invalidated.” *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). As more recently stated by the  
09 United States Supreme Court: “[A] state prisoner’s § 1983 action is barred (absent prior  
10 invalidation)--no matter the relief sought (damages or equitable relief), no matter the target of the  
11 prisoner’s suit (state conduct leading to conviction or internal prison proceedings)--if success in  
12 that action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson*  
13 *v. Dotson*, 544 U.S. 74, 81-82 (2005).

14       In this case, plaintiff presents a challenge to the duration of his confinement and a finding  
15 in his favor and award of the relief sought would necessarily demonstrate its invalidity. He makes  
16 no allegation or showing that his confinement has been invalidated or impugned in any respect.  
17 Accordingly, plaintiff’s claims are not cognizable under § 1983.<sup>1</sup>

18       A district court should not convert a defective § 1983 claim into a petition for a writ of  
19 habeas corpus unless it is clear that the plaintiff intends to bring a habeas petition. *Trimble v. City*  
20 *of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995). Instead, the district court should dismiss the

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22       <sup>1</sup> Because plaintiff’s claims are not cognizable for the reason described above, the Court declines to address other deficiencies in plaintiff’s proposed complaint as to named defendants.

01 § 1983 claims without prejudice. *Id.* Therefore, the Court recommends that plaintiff's application  
02 to proceed IFP be denied and his § 1983 action be dismissed without prejudice pursuant to §  
03 1915(e)(2)(B). A proposed order accompanies this Report and Recommendation.

04 DATED this 11th day of January, 2008.

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06 Mary Alice Theiler  
07 United States Magistrate Judge  
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